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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

SHELLEY M. SANTOS,

Plaintiff and Appellant,

v.

RICHARD S. HAWKINS et al.,

Defendants and Respondents.

E053882

(Super.Ct.No. RIC515121)

OPINION

APPEAL from the Superior Court of Riverside County. Paulette Durand-Barkley, Temporary Judge (Pursuant to Cal. Const., art. VI, § 21) and Gloria Trask, Judge.*
Affirmed.

Shelley M. Santos, in pro. per.; Richard D. Pfeiffer for Plaintiff and Appellant.

Ford, Walker, Haggerty & Behar and Maxine J. Lebowitz for Defendants and Respondents.

* Judge Durand-Barkley made the contested ruling on the motion to compel discovery; Judge Trask made the remainder of the contested rulings.

Appellant Shelley M. Santos appeals after the trial court granted summary judgment in favor of the respondents, Richard S. Hawkins, D.D.S., and Lourdes P. Veronica Hawkins, D.D.S. (collectively, the Hawkinses).¹ Santos had been a patient of the Hawkinses and had received dental care between 1995 and 2007. Santos filed a complaint against the Hawkinses in 2008 for negligence based on allegations that she had several problems with her teeth caused by the Hawkinses' malpractice. Santos was unable to find an expert to support her claims of dental malpractice.

Santos makes three claims on appeal:

1. The trial court erred by granting summary judgment solely on the basis that she did not present an expert to dispute the expert declaration presented by the Hawkinses attesting that the dental care provided was within the standard of care.
2. The trial court erred by denying her motion to compel discovery.
3. The trial court abused its discretion by refusing to allow her to amend her complaint, which she requested in her opposition to the summary judgment motion.

We affirm the trial court's judgment.

¹ The Hawkinses will hereafter be individually referred to by their first names, not out of any familiarity or disrespect, but to ease the burden on the reader. (See, e.g., *In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801, 803, fn. 2.)

I

FACTUAL BACKGROUND²

The Hawkinses were husband and wife and operated their own private dental practice. Santos became their patient in December 1995. Complete X-rays were taken. At that time, she had a tooth infection on tooth No. 14. She was referred to an endodontist for treatment.

On February 13, 1996, Santos began treatment with the Hawkinses. At that time, the Hawkinses identified Santos as having periodontal issues. It was recommended that she seek the services of a periodontist at least every four months for treatment. Santos claimed she was never advised of the periodontal problems but admits they appeared in her dental records.

The Hawkinses claimed that Santos refused the referral to a periodontist because she did not think her insurance would pay for the treatment. On February 28, 1996, she had root canal treatment on tooth No. 3. In order to perform the root canal, a bridge that had been installed by a previous dentist had to be removed and recemented. Santos claimed that she had had trouble with the bridge since it was recemented.

² In Santos's opening brief, she provides pages of facts with very few citations to the records. Many of the facts provided in her statement of facts cannot be found in the record. In her reply brief she provides some citations to the record. We rely on the separate statement of facts submitted by both parties in the trial court and relied upon by the trial court in granting the summary judgment motion.

Throughout the years of treatment, Santos received regular dental cleanings and periodontal treatment during the cleanings. On April 17, 1996, she was again advised she should seek regular periodontal treatment. Santos disputed that she was ever advised to seek periodontal treatment. Santos claims she was not advised to seek deep cleanings until August 2006 when there was something found wrong with the bridge.

Santos continued to complain about problems with tooth No. 18. In November 1996, she received a permanent crown on tooth No. 18. On December 5, 1996, when Santos's occlusion³ had to be adjusted on the crown on that tooth, she was advised that she needed a night guard but refused to use it. Santos disputed that she was ever advised that she needed a night guard.

On April 6, 2002, Santos was again advised to seek periodontal treatment but refused. Santos insisted she did not refuse periodontal treatment.

On September 6, 2003, Santos complained of mobility at tooth No. 3. The tooth was fractured on the surface. It was recommended that it be removed and replaced with an implant. Implants were placed on teeth Nos. 4 and 5 on September 27, 2003, and crowns were placed over the top of the implants. They were affixed with temporary cement until Santos could be seen by a specialist as to how to fix tooth No. 3. Santos was referred to an oral surgeon for tooth No. 3 because she needed a sinus lift in order to

³ Occlusion is "the bringing of the opposing surfaces of the teeth of the two jaws into contact; *also*: the relation between the surfaces when in contact" (Webster's 9th New Collegiate Dict. (1991), p. 817, col. 1.)

execute the implant. She was also referred to an orthodontist for an evaluation of her bite. Her bite and malocclusion were impacting the restorative and implant work. Santos stated that tooth No. 3 had to be extracted in 2004. She had several temporary crowns that broke. Santos was never advised that she was receiving temporary crowns. She admitted that she had been advised about seeking treatment from an orthodontist and about a sinus lift. She decided to wait until the implants were completed on teeth Nos. 4 and 5.

Santos was claiming permanent bone loss of the left upper maxillary region; partial hearing loss to her left ear; swelling of the left side of her face; loss of teeth Nos. 13, 14, and 15 and possible loss of tooth No. 12; and incomplete restorations of implants on teeth Nos. 4 and 5.

II

PROCEDURAL BACKGROUND

On December 15, 2008, Santos filed a complaint for damages claiming dental negligence (the complaint) against the Hawkinses. Santos alleged that between February 1, 1995, and December 15, 2007, she received dental care from the Hawkinses. She admitted that she had no specialized dental training or dental education as a means to discover any misconduct, negligence, or culpability. She alleged that as a result of the Hawkinses' negligence she lost several teeth due to bone loss caused by progressive and untreated periodontal disease, aggravated by the Hawkinses' negligent restorative efforts causing damage to nerves, periodontal apparatus, and the temporomandibular joints.

Santos alleged she would suffer permanent disability and would require future dental care, and she suspected a future loss of earnings.

On July 2, 2009, the Hawkinses filed an answer (the answer) denying every allegation in the complaint. The Hawkinses responded that Santos's own negligence caused her injury, she was well aware of the probable risks in getting treatment, and any injuries were the natural cause of being treated for her condition.

On November 4, 2009, Santos filed a case management statement. She clarified that she was alleging that the Hawkinses negligently restored teeth lost from a "failed bridge" and concealed that they were not properly restored. Periodontal disease that was untreated by the Hawkinses resulted in bone loss, loss of more teeth, and hearing loss.

On July 15, 2010, the Hawkinses filed their motion for summary judgment. Declarations were submitted from the Hawkinses' counsel, Richard, Veronica, and Edmond Hewlett, D.D.S. A statement of undisputed material facts was also submitted, which we will discuss, *post*. The motion for summary judgment alleged that dental malpractice could only be shown by expert testimony.

Richard and Veronica both attested to the fact that they were the custodian of records at their office and that Santos's dental chart was maintained in the ordinary course of business. They attested, under penalty of perjury, that it contained any and all information related to the care, diagnosis, evaluation, examination, recommendations, and referrals for Santos. The chart was included with the motion for summary judgment showing treatment of Santos between December 1995 and February 2008.

Dr. Hewlett, the Hawkinses' expert, declared that he was a prosthodontist and had been licensed to practice in California since 1981. He recounted his education and employment history. His curriculum vitae was attached. He declared that based on his training, education, and experience he was familiar with the standard of care for general dentists and prosthodontists. He had reviewed Santos's dental chart, including X-rays. He had also reviewed records from other dentist offices and endodontic groups from which Santos had received treatment.

Dr. Hewlett then recounted the work done on Santos. First, the implant of a crown on tooth No. 4 was performed within the standard of care. Further, there was no evidence from the records that the implant placed on tooth No. 4 was "over-torqued" as alleged by Santos. Dr. Hewlett declared that the design of a dental implant was such that the screw in the implant is designed to break so that no damage would result on the implant itself or the underlying bone structure. There was no indication that the implant or screw was broken. It was not broken during the procedure.

The temporary nature of the crowns on teeth Nos. 4 and 5 was appropriate since tooth No. 3 had to be fixed by a periodontist before permanent crowns could be placed on Santos's teeth. This treatment was within the standard of care. Further, Dr. Hewlett rejected that there was any failure on the Hawkinses' part to diagnose an occlusion in her bite prior to placing the implants on teeth Nos. 4 and 5.

Further, any infection Santos had in tooth No. 12 was not evident from the records, and if there was an infection, it was not caused by any care by the Hawkinses.

Santos had a bridge on teeth Nos. 3 through 6 that was placed prior to treatment by the Hawkinses. The bridge was removed to perform a root canal on tooth No. 3, and the bridge was recemented in place. It was performed within the standard of care. All treatment of teeth Nos. 3 and 18 was within the standard of care.

Finally, as to the failure to diagnose periodontal disease, Veronica advised Santos as early as 1996 that she had periodontal disease due to prior dental work. Santos was advised that she should receive treatment from a periodontist every four to six months, but she refused the treatment because it was not covered by insurance. Hawkins provided treatment during cleanings. Dr. Hewlett concluded that the Hawkinses' treatment of Santos was "performed within the standard of care"

On September 22, 2010, Santos filed an ex parte application to continue the motion for summary judgment. She explained that she had an appointment with an expert and wanted to continue the matter to substantiate her claims. She acknowledged that expert evidence is generally necessary to show the standard of care in California.

On November 10, 2010, Santos filed her opposition to the motion for summary judgment. She admitted in her opposition to the summary judgment motion that without an expert to establish the standard of care, she would have a hard time proving her negligence claim. Santos sought to amend the complaint to add claims for fraud, misrepresentation, and lack of informed consent. Santos did not have adequate time to file a motion for leave to amend the complaint. She alleged that there was a triable issue

of fact as to whether or not the Hawkinses were responsible for her damages sustained by an untreated periodontal condition.

Santos had consulted with an expert named Dr. Dennis G. Smiler, who stated that he would examine her mouth and her records for a fee. Dr. Smiler advised her, before she incurred any further costs, that she likely would not prevail in a lawsuit. He consulted with his attorney who further confirmed that she likely would not prevail in a lawsuit. Despite this warning, Santos paid Dr. Smiler for his expert opinion and review of records. She attached a letter she received from Dr. Smiler after the review.

According to the letter, Dr. Smiler reviewed all of the records in the case. He also conducted an examination of Santos on October 1, 2010. Dr. Smiler stated, “In particular I find the records of Dr. Hawkins to be complete and comprehensive. The records of Dr. Hawkins are well organized and reflect dental care that is with the ‘standard of care[.]’ [¶] It is my opinion that the care and treatment you received by Dr. Hawkins and other numerous clinicians involved in your treatment, were within the standard of care. As such I cannot recommend that you secure my services as an expert to give credence to your case before the court.”

The Hawkinses filed a reply to the opposition. They responded that in order to establish that they failed to adhere to accepted standards of practice, such standards may be established only by qualified expert testimony. The only expert opinion proffered by Santos supported that the Hawkinses exercised the standard of care. Further, Santos had failed to properly seek leave to amend the complaint.

A hearing on the motion for summary judgment was held on November 19, 2010, as will be discussed in more detail, *post*. The motion was granted, and judgment was entered on December 27, 2010. Santos filed a motion for new trial, which was denied.

Santos appeals the judgment entered as a result of the motion for summary judgment, as well as the rulings on her motion to compel discovery and purported motion to amend the complaint.

III

MOTION TO COMPEL

Santos complains that the trial court erred when it refused to grant her motion to compel further discovery.

A. *Additional Factual Background*

On July 7, 2010, Santos filed a motion to compel further responses to special and supplemental interrogatories she had served on the Hawkinses. Santos complained that the Hawkinses were withholding information. She also claimed that a response to refer to her dental chart was not sufficient and that the chart was indecipherable.

The Hawkinses filed an opposition to the motion to compel. They claimed that the responses to the interrogatories were complete and that no further documentation beyond Santos's dental records could be provided. Any further detail in interpreting the dental records could be provided through depositions. In addition, the Hawkinses contended that Santos had failed to comply with the California Rules of Court requiring a separate statement, which Santos had failed to include. Also, pursuant to Code of Civil Procedure

section 2030.300, she had failed to include with specificity what interrogatories required further response, and she did not meet and confer regarding the responses.

On August 9, 2010, the parties appeared for a hearing. The trial court continued the matter so that Santos could file a separate statement that was supposed to be filed with the motion to compel.

On August 11, 2010, Santos filed a separate statement of facts in support of her motion to compel further responses to the special and supplemental interrogatories. She claimed that on May 24, 2010, she had requested that the Hawkinses review their previously submitted responses to the special and supplemental interrogatories and determine if there were any changes or later-acquired information. On June 28, 2010, the Hawkinses had responded that they had no further information.

Santos then detailed the interrogatory responses she felt were inadequate.⁴ Santos filed a supplemental meet-and-confer declaration in support of her motion to compel. She submitted correspondence between herself and the Hawkinses' counsel about further responses.

At the hearing on the matter, Santos complained that the responses she received from the Hawkinses to the interrogatories referred her back to the dental chart and were incomplete. Santos contended that since her dental records were difficult to read and understand, they should be transcribed by the Hawkinses to clarify the abbreviations and

⁴ Although this court has reviewed this part of the record, it is unnecessary to recount the specifics in order to resolve the issue on appeal.

medical information. The Hawkinses argued that they were not required to do this in written discovery; depositions and her own expert could perform this task. All of the information that Santos sought was in the dental records.

The trial court stated that Santos had to be complete with dates and times in order to require that the Hawkinses get more discovery. Further, Santos's own expert and depositions could clarify the dental records. There was no authority in the code to make the Hawkinses transcribe the records. The trial court felt that the Hawkinses had no further discovery to give.

The trial court ruled, "I'm denying these motions. No sanctions, but you need to focus in on each of your issues. And in terms of the discovery, there are other forms for discovery maybe to discuss what these charts mean, but that's not a further response to the discovery." The trial court suggested that Santos take depositions or other discovery.

B. *Analysis*

The trial court did not error by denying the motion to compel. We review a trial court's ruling on a motion to compel discovery under the abuse of discretion standard. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.) ""Management of discovery generally lies within the sound discretion of the trial court." [Citation.] "Where there is a basis for the trial court's ruling and it is supported by the evidence, a reviewing court will not substitute its opinion for that of the trial court. [Citation.] The trial court's determination will be set aside only when it has been demonstrated that there was 'no legal justification' for the order granting or denying the discovery in question.""

[Citation.] [¶] The foregoing standard is highly deferential to the trial court”

(*Lickter v. Lickter* (2010) 189 Cal.App.4th 712, 740.)

Here, the Hawkinses represented that there was nothing further they could provide in their interrogatory answers. Santos briefly mentions in her opening brief that she would have received additional evidence of dental assistants who witnessed some of the treatment and the disclosures that were made to her. She provides no other argument on appeal as to how the trial court erred by denying the motion to compel and how any further response to the interrogatories would have provided the needed information. Based on the Santos’s ability to depose the Hawkinses to obtain further information, it was not an abuse of discretion to deny further responses to the interrogatories at that stage of the process.

The only statements in front of the trial court were that the Hawkinses provided full and complete responses to the interrogatories. The Hawkinses were entitled to object to questions if they were not properly formed. They repeatedly stated that they had no further information to give, and the trial court was entitled to believe them. At the time of the motion to compel, the trial court did not abuse its discretion by denying further response to the interrogatories.

IV

MOTION FOR SUMMARY JUDGMENT

Santos claims that the trial court erred by granting the Hawkinses' motion for summary judgment on the sole ground that she failed to present expert testimony in her opposition.

A. *Additional Factual Background*

On November 19, 2010, the parties appeared on the motion for summary judgment, which was outlined, *ante*. The trial court tentatively ruled, "It's the court's intention to grant the motion for summary judgment. [¶] The opposition is not timely. I did consider the opposition. However, the opposition does not present any expert evidence to rebut the defendants' expert and evidence. [¶] The evidentiary objections I have granted in part and sustained in part. I think the fact that there is no plaintiff's expert says it all. There are no triable issues of fact. And it's the court's intention to grant it."

Santos then asked the trial court if it had taken into account the fact that she wanted to amend the complaint because of the way it was drawn up. The trial court noted that a motion for leave to amend could not be incorporated into opposition to a motion for summary judgment. Santos claimed she had just become aware that she could have alleged differently in the complaint. Santos stated, "It's just been very frustrating and I feel like it's an injustice to not be able to present my case to the court because of the fact I don't have an expert."

The trial court noted that Santos did have an expert and that the expert disagreed with her. It felt that Santos had an opportunity to present her case to the court. It granted the motion for summary judgment.

B. *Standard of Review*

“A trial court may only grant a motion for summary judgment if no triable issues of material fact appear and the moving party is entitled to judgment as a matter of law. [Citations.]” (*Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 618.) “[G]enerally, from commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that [s]he is entitled to judgment as a matter of law.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850, fn. omitted.)

A motion for summary judgment must be supported by “a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed,” and each of those material facts must be “followed by a reference to the supporting evidence.” (Code Civ. Proc., § 437c, subd. (b)(1).)⁵ The opposition papers must “include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed” and that sets forth “any other material facts that the opposing party contends are disputed.” (§ 437c, subd. (b)(3).) The party opposing a

⁵ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

summary judgment motion is required to provide a reference to the supporting evidence for each fact that is disputed. (*Ibid.*)

“On appeal after a motion for summary judgment has been granted, we review the record de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained. [Citation.]” (*Guz v. Bechtel National Inc.* (2000) 24 Cal.4th 317, 334.) “In performing our de novo review, we must view the evidence in a light favorable to plaintiff as the losing party” (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.)

C. *Analysis*

Based on our review of the motion for summary judgment, the accompanying declaration and documents, and the opposition, we agree with the trial court’s conclusion.

The sole cause of action in the complaint was dental malpractice. “The elements of a cause of action for medical malpractice are: (1) a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) a breach of the duty; (3) a proximate causal connection between the negligent conduct and the injury; and (4) resulting loss or damage. [Citation.]” (*Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 305.)

“In a case of professional malpractice, the standard of care against which the acts of the professional are to be measured generally requires expert testimony. [Citations.]” (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 296.)

As a result, “expert opinion testimony is required to prove or disprove that the defendant performed in accordance with the prevailing standard of care [citation], except in cases where the negligence is obvious to laymen.” (*Kelley v. Trunk* (1998) 66 Cal.App.4th 519, 523.) A defendant may therefore seek summary judgment in a motion based on a well-supported expert declaration demonstrating treatment of the patient was within the appropriate standard of care. (*Jambazian v. Borden* (1994) 25 Cal.App.4th 836, 844.)

Throughout her complaint, her opposition, and her responses to interrogatories, Santos detailed problems she experienced with her teeth. However, she provided no testimony to refute that the Hawkinses’ treatment was not within the standard of care.

Dr. Hewlett submitted his curriculum vitae that outlined pages of his experience in dentistry. He attested that he was familiar with the standard of care for dentists in the counties of Orange, Los Angeles, and Riverside. Dr. Hewlett went through each claim made by Santos that could be discerned from review of the dental records, X-rays, the complaint, Santos’s responses to interrogatories, and Santos’s deposition (which was not made part of the record on appeal). Dr. Hewlett then went through each and every claim raised by Santos and expressed his opinion, based on his review of the records and his training and experience, that Santos’s treatment was within the standard of care.

Santos did not submit her own expert declaration in response. Rather, she presented the declaration of Dr. Smiler. Dr. Smiler advised Santos that all care of her teeth was performed within the standard of care. The trial court properly granted the summary judgment motion due to Santos’s failure to submit an expert declaration. (See

Willard v. Hagemeister (1981) 121 Cal.App.3d 406, 412–414 [plaintiff’s failure to submit declaration of an expert in opposition to summary judgment motion was fatal to negligence cause of action for dental malpractice].)

Dr. Hewlett’s declaration stated facts sufficient to sustain a judgment, and Santos did not submit competent and sufficient evidence to present a triable issue of fact as to any supposed malpractice. Therefore, the issue of the Hawkinses’ negligence in the treatment of Santos was properly resolved when the summary judgment motion was granted.

Santos’s relies on *Kelly v. Trunk, supra*, 66 Cal.App.4th 519, claiming that the expert declaration was insufficient to shift the burden to her because it was too conclusory, and Dr. Hewlett did not explain how he reached his conclusions. In *Kelley*, the court held that “an opinion unsupported by reasons or explanations does not establish the absence of a material fact issue for trial, as required for summary judgment.” (*Id.* at p. 524.) There the medical expert simply summarized the treatment the plaintiff had received and stated in conclusory fashion, “[the defendant] acted appropriately and within the standard of care under the circumstances presented.” (*Id.* at p. 522; see also *Johnson v. Superior Court, supra*, 143 Cal.App.4th at pp. 306-307 [defense declaration too conclusory to satisfy defense burden].) This case is unlike *Kelley*. Here, Dr. Hewlett had reviewed all of the records in the case and explained his extensive experience. He explained why each treatment was appropriate and within the standard of care.

Santos claims that she was not advised that she had a periodontal condition that needed to be addressed by an expert. She should have been referred to an expert for her implants. However, Santos's claim in the complaint was that the Hawkinses performed their dental work negligently, not that she was ill advised.

Finally, Santos's claims under the theory of *res ipsa loquitur* that she did not need to provide an expert. "The 'common knowledge' exception is principally limited to situations in which the plaintiff can invoke the doctrine of *res ipsa loquitur*, i.e., when a layperson 'is able to say as a matter of common knowledge and observation that the consequences of professional treatment were not such as ordinarily would have followed if due care had been exercised.' [Citation.] The classic example, of course, is the X-ray revealing a scalpel left in the patient's body following surgery. [Citation.] Otherwise, "expert evidence is conclusive and cannot be disregarded. [Citations.]" [Citation.]" (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001, fn. omitted.)

Santos failed to establish that the "common knowledge" exception applied and no expert explanation was required. Despite Santos's claim that her dental work was performed negligently, it is not within common knowledge that periodontal disease may cause problems with a bridge or implants. Moreover, it is not within common knowledge how implants and crowns are installed.

In light of the foregoing facts and circumstances, the trial court could properly grant summary judgment.

V

MOTION TO AMEND COMPLAINT

Santos also contends that the trial court abused its discretion by refusing to allow her to amend her complaint to include allegations of lack of informed consent, misrepresentation and fraud.

A. *Additional Factual Background*

In her opposition to the motion for summary judgment, Santos claimed that she was seeking to amend her complaint to add causes of action for fraud, misrepresentation, and lack of informed consent. As outlined, *ante*, the trial court refused to grant leave to amend the complaint.

Santos also filed a motion for new trial on December 9, 2010. She complained that the trial court would not allow her to amend the complaint.

The Hawkinses filed opposition. They argued that a separate motion for leave to amend was required by California Rules of Court rule 3.1324(a)(1), and one was never filed. A hearing was conducted on January 12, 2011. The trial court indicated it intended to deny the motion for new trial. It also noted that the issue of wanting to amend the complaint was improperly included in the opposition to the summary judgment and was not considered by the trial court. It indicated that Santos had failed to plead these claims in the complaint. Santos stated that she had someone else prepare the complaint, and she did not realize it was deficient. The motion for new trial was denied.

B. *Analysis*

“““[T]he trial court has wide discretion in allowing the amendment of any pleading [citations], [and] as a matter of policy the ruling of the trial court in such matters will be upheld unless a manifest or gross abuse of discretion is shown. [Citations.]”” [Citations.]” (*Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 746.)

Code of Civil Procedure section 473, subdivision (a)(1) provides for the opportunity to amend a complaint. California Rules of Court rule 3.1324, subdivisions (a) and (b) require that in order to amend a pleading before trial, a copy of the proposed amended pleading must be submitted to the court along with a declaration as to the need for the amendment and when the facts giving rise to the amendment were discovered.

Santos never filed a motion for leave to file an amended complaint as required by rule 3.1324 of the California Rules of Court. Since she failed to file the proper motion to amend the complaint, the trial court properly denied it. “[M]ere self-representation is not a ground for exceptionally lenient treatment. Except when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation. [Citation.] . . . A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation.” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Despite the fact that Santos represented herself, she was not entitled to preferential treatment.

The trial court properly did not consider the issue raised in her opposition to the motion for summary judgment, rather than in a formal motion seeking to amend the complaint.

Moreover, Santos filed her complaint in December 2008 and did not seek an amendment until she filed her opposition to the summary judgment motion in November 2010. She claimed she realized that she was not going to win on a negligence standard and therefore sought to amend the complaint so that she would have a viable cause of action. The trial court did not abuse its discretion in refusing to allow Santos to amend the complaint at this late stage of the proceeding. (See *Huff v. Wilkins*, *supra*, 138 Cal.App.4th at p. 746 [delay in bringing amendment is valid reason for denial].)

VI

DISPOSITION

The judgment is affirmed. Respondents are awarded costs on appeal.

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RICHLI
J.

We concur:

HOLLENHORST
Acting P. J.

McKINSTER
J.